Supreme Court of the United States

OCTOBER TERM, 1928

No. 561

INTERNATIONAL MILLING COMPANY, Petitioner,

vs.

COLUMBIA TRANSPORTATION COMPANY,

Respondent.

Brief and Argument for Respondent in Opposition to Petition for Writ of Certiorari.

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Counsel for Respondent.

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Of Counsel for Respondent.

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INTERNATIONAL MILLING COMPANY, PETITIONER,

vs.

COLUMBIA TRANSPORTATION COMPANY,

RESPONDENT.

Brief and Argument for Respondent in Opposition to Petition for Writ of Certiorari.

Statement of Facts

Both petitioner, plaintiff, below, and respondent, defendant, below, are foreign corporations, not resident in Minnesota. Respondent neither owns nor operates any property in Minnesota, carries on no activities in the State except those incidental to transportation of cargoes by water in interstate business (Rec. Fol. 72-3), maintains no office in the State, has no agent in the State, and navigates its vessels upon the Great Lakes to ports of Minnesota only over navigable waters of the United States.

On or about December 4th, 1930, petitioner filed a libel in admiralty in the United States District Court at

Buffalo *in rem* against the Steamer "W. C. Richardson," then owned by Columbia Steamship Company, predecessor of respondent, seeking to recover the same damages, arising out of the same cause of action as that involved in the present case. The "Richardson" was seized and duly released by the filing of a bond. Exceptions were filed to the libel, which exceptions were sustained, the libelant being given twenty days within which to amend, and the case was dismissed at libelant's cost when no amended libel was filed.

During the pendency of the proceeding in the Admiralty Court at Buffalo libelant's attorneys inquired whether the Columbia Steamship Company would enter appearance and defend in an action to recover for said alleged damages to be brought at law in State or Federal Court at Buffalo (R. 97). On or about February 4th, 1931, the Columbia Steamship Company, by its attorneys, agreed that it would enter appearance and defend in an action at law to be brought in United States District Court at Buffalo. Such action was never instituted but the next proceeding was a suit brought by Chance W. Clark, a citizen of Ohio, as assignee of petitioner in the District Court of St. Louis County, Minnesota, at Duluth, against the Columbia Steamship Company, an Ohio corporation. A summons was served upon the Captain of the Steamship "Harvey D Goulder," and the steamer seized under writ of attachment levied on August 18th, 1931. The ship was released upon the filing of bond. The service of process and the writ of attachment were vacated for the reason that to allow the action to proceed would have operated to place an unreasonable condition, burden and restraint on interstate commerce. No appeal was taken from the order of the District Court (R. 100-107).

The present suit was instituted by the International Milling Company, a Delaware corporation, to whom the cause of action herein involved presumably was reassigned by Chance W. Clark. Purported service of summons was made upon the Captain of the "C. Russell Hubbard," a ship owned by respondent, and writ of attachment was levied upon said vessel while moored at a dock at Allouez, Wisconsin, and being unloaded by the dock crew (R. 63). The steamer was released upon the filing of bond. The District Court granted the motion of the defendant for the vacating of the service of process and levy of attachment, following the ruling of the same court, by a different judge, in the previous case brought by Clark (R. 293).

The Supreme Court of Minnesota sustained that order. 250 N. W., 186, 190.

Argument

Preliminary

The decisions upon which respondent primarily relies are:

Davis v. Farmers Co-operative Co., 262 U. S. 312;

Atchison T. & S. F. R. Co. v. Wells, 265 U. S. 101;

Texas Transport & Terminal Co. v. City of New Orleans, 264 U. S. 150;

Di Santo v. Pennsylvania, 273 U. S. 34;

Michigan Central R. R. Co. v. Mix, 278 U. S. 492;

Denver & R. G. W. R. Co. v. Terte, 284 U. S. 284.

Petitioner's brief makes it clear that, for the allowance of the writ it relies upon the ground stated within Rule 38 (former Rule 35) Section 5 (a) of the Rules of this court, contending that the decision of the State Court herein is the decision of a federal question of substance not heretofore determined by this court.

The cases above cited upon which respondent relies clearly establish that this court has decided the federal question here involved upon facts in which the legal position of the parties was in substance exactly the same as the position of the parties in this case.

I.

Prior decisions of this court have decided the Federal question here involved and the conclusion of the Supreme Court of Minnesota in this proceeding follows those decisions.

Davis v. Farmers Co-op. Co., 262 U. S. 312, was an action by a Kansas corporation in a court of Minnesota for recovery for loss of grain shipped under a bill of lading issued by the carrier in Kansas for transportation over its line from one point in that state to another. The transaction was in no way connected with Minnesota. The carrier did not own or operate any railroad in Minnesota, but it maintained there an agent for solicitation of traffic. A Minnesota Statute permitted service of process upon an agent maintained in this state by a foreign railroad to solicit business for transportation over its lines in other states in suits which might arise out of transactions in other states in favor of non-residents of the state. The statute was held invalid as a violation of

the Commerce Clause of the Federal Constitution. In this case the court says (p. 315):

> "That the claims against interstate carriers for personal injuries and for loss and damage of freight are numerous; and that the amounts demanded are large; that in many cases carriers deem it imperative or advisable to leave the determination of their liability to the courts; this litigation in states and jurisdictions remote from that in which the cause of action arose entails absence of employees from their customary occupations; and that this impairs efficiency in operation, and causes, directly and indirectly, heavy expense to the carriers; these are matters of common knowledge."

Atchison, Topeka & Santa Fe Ry. Co. v. Wells, 265 U. S. 101, was a case in which Wells, a resident of Colorado, was injured in New Mexico, while employed by the railway company. He sued in Texas, without personal service, and garnisheed rolling stock of the Santa Fe in the possession of and traffic balances owed to the Santa Fe by a Texas railroad. The judgment was for the plaintiff Wells in the state court, and suit was brought to enjoin enforcement of that judgment.

The Santa Fe Railway was not doing business in Texas. The writ and the judgment based thereon were held void by this Court not because the rolling stock was being used in interstate commerce or the amount due on traffic balances arose out of transactions in such commerce, but because the suit "necessarily and unreasonably" burdened interstate commerce. The court said, (p. 103):

> "The Santa Fe is a Kansas corporation. It had not been admitted to Texas as a foreign corpora-

> tion. It had not consented to be sued there. It did not own or operate any line of railway within the state; and had no agent there. The Texas statutes concerning garnishment were construed and applied in the Wells suit so as to permit a citizen and resident of another state to prosecute in Texas a cause of action which arose elsewhere against a railroad corporation of another state, which is engaged in interstate commerce, which neither owns nor operates a railroad in Texas, and which has not consented to be sued there. For the reasons stated in *Davis v. Farmers Co-op. Co.*, 262 U. S. 312 (decided since the entry of the judgment here under review) such a suit necessarily and unreasonably burdens interstate commerce; and the statute as construed and applied is invalid."

The Court in its decision distinctly pointed out that the rolling stock and traffic balances were not immune from seizure by attachment or garnishment but the writ of garnishment was invalid because the purpose for which it was invoked imposed a burden upon interstate commerce.

Michigan Central R. R. Co. v. Mix, 278 U. S. 492, was an action based upon the Federal Employers' Liability Act against a Michigan corporation, brought in Missouri. This Court, on certiorari, reviewed a judgment of the Supreme Court of Missouri denying the application of the railway company for a writ of prohibition to enjoin the judges of the lower court from trying the action. Plaintiff's intestate, a resident of Michigan, was killed in Michigan while employed by the defendant. Summons was served upon the agent in charge of an office maintained by defendant at St. Louis for the purpose of soliciting freight for transportation in interstate commerce over its lines in other states. The railroad

had no lines in Missouri, and its operations in the state consisted of soliciting business. When the cause of action accrued in Michigan the plaintiff was a resident of Michigan, but before suit was brought, she removed to Missouri and became a resident of that state. It was pointed out by this court in its decision that this case differed from the Davis and Wells cases only in that in each of these cases the plaintiff was a non-resident, while here the plaintiff had become a resident of Missouri after the injuries complained of but before instituting the action. The judgment of the state court was reversed on the ground that the trial of the action for damages in Missouri would entail a heavy burden upon and unreasonably obstruct interstate commerce. In the decision the court says, page 495:

> "The case is unlike others in which the jurisdiction was sustained against a non-resident railroad. In *Missouri ex rel. St. Louis, Brownsville & Mexico Railway Co. v. Taylor*, 266 U S. 200, it appeared that the shipment out of which the cause of action arose was of goods deliverable in Missouri; and also that the negligent acts complained of may have occurred within the state. In *Hoffman v. Missouri ex rel. Foraker*, 274 U. S. 21, the railroad was organized under the laws of the state, and operated a part of its line in the county in which the action was brought."

It appears therefore that both the Taylor case and the Foraker case, cited by petitioner in its brief, were passed upon and differentiated by the court in the Mix case.

Denver & R. G. W. R. Co. v. Terte, 284 U. S. 284, reaffirms the decision in the Mix case and is decisive of all issues in the present case. In the Terte case one Curtis brought an action seeking damages under the

Federal Employers' Liability Act for a personal injury sustained in Colorado, alleged to have occurred through the joint negligence of the Santa Fe and the Rio Grande Railroads. The action was brought in Missouri, to which state Curtis had removed and had become a bona fide resident and citizen, after being injured. The Rio Grande Railway was a Delaware corporation, which did not own or operate any line of railway in Missouri, and was not licensed to do business in that state, but did own and use property there, maintained one or more offices there and employed agents who solicited traffic. The Santa Fe Railway was a Kansas corporation and owned and operated railroad lines in Missouri and other states. It was licensed to do business in Missouri. Summonses were served upon agents of both the Santa Fe and Rio Grande Railways in Missouri and a writ of attachment against the Rio Grande was served upon several railroad companies alleged to be indebted to it. This Court was called upon to review the refusal of the Supreme Court of Missouri to grant an application by the Rio Grande Railway for a writ of prohibition to restrain Ben Terte, judge of the Circuit Court of Jackson County, Missouri, from entertaining jurisdiction of the action brought by Curtis.

Following the Hoffman case, this Court held that the Santa Fe Railroad was properly sued in Missouri, but that under the rule in the Mix case the Rio Grande Railway was not required to defend the action there. It was held that the prohibition against burdening interstate commerce cannot be avoided by attaching the property of a non-resident railroad corporation, and the court says, page 287:

> "Obviously, the burden and expense which the carrier must incur in order to make defense in a State where the action did not occur has no rela-

tion to the nature of the process used to bring it before the court.

"The alleged residence in Missouri of persons whose testimony plaintiff supposed would be necessary to prove his claim was not enough to justify retention of jurisdiction by the Circuit Court. While this circumstance might enable plaintiff to try his case there with less inconvenience than elsewhere, it would not prevent imposition of a serious burden upon interstate commerce. And, we have held, it is the infliction of this burden that deprives the courts of jurisdiction over cases like this. *Davis v. Farmers Co-op. Co.*, 262 U. S. 312. Further, as a practical matter, courts could not undertake to ascertain in advance of trial the number and importance of probable witnesses within and without the state and retain or refuse jurisdiction according to the relative inconvenience of the parties."

II.

Petitioner is not a resident of Minnesota.

Petitioner's brief (p. 13) argues there is one ground upon which the instant case may be distinguished from the Davis and subsequent cases in this Court. This ground is that petitioner, being a Delaware corporation qualified to do business in the state of Minnesota, is a resident of the state of Minnesota, whereas, in the Davis case and some of the subsequent cases the plaintiff was a non-resident of the state in which the action was brought.

While the residence of a plaintiff is not controlling,—the issue being the burden upon the defendant,—the

statement that petitioner is a resident of Minnesota is erroneous. The Plaintiff, a Delaware corporation, does not acquire residence in Minnesota by reason of the maintenance of its principal place of business in the state. The rights of a citizen of one state to all the privileges and immunities of citizens of other states are limited to natural persons and do not extend to corporations as citizens of the state where created. The privilege of such corporation to do business in another state is permitted by comity alone and does not rest upon any natural right,—being an artificial person it has no natural rights. A corporation cannot be considered a citizen and an inhabitant or a resident of a state in which it is not incorporated. *Shaw v. Quincy Mining Co.*, 145 U. S. 444; *Southern Pacific Co. v. Denton*, 146 U. S. 202.

In *Railroad Co. v. Harris*, 12 Wall. 65, 81, it is said that a corporation cannot migrate but may extend its business into another state by meeting requirements of that state. To the same effect is *Magna Oil & Ref. Co. v. White Star Refining Co.* (3 C. C. A.) 280 Fed. 52, at page 62.

III.

Even if petitioner were a resident of Minnesota (which is denied) this case comes within former decisions of this court.

On this phase of the question we call the court's attention specifically to the Terte case already cited. It will be particularly noted that in this case the plaintiff was definitely and positively a resident and citizen of the state in which suit was instituted, a bona fide resi-

dent and not such a resident as petitioner in the present case.

As to petitioner's comment on the Terte case at page 19 of its Brief where it states that "this Court has not passed on the precise situation here involved where we have a suit (a) by a resident plaintiff, (b) against a foreign corporation, (c) operating in the state, (d) on a cause of action which arose outside the state."—

Petitioner is something less than candid in this statement. If we should assume, while not admitting, that petitioner is a resident of Minnesota and that respondent is doing some interstate business in Minnesota—the view of the facts most favorable to the petitioner possible under the record, this case should be stated as follows:—A suit (a) by a resident plaintiff, (b) against a foreign corporation, (c) not operating in the state except in interstate commerce, and (d) on a cause of action which arose outside the state.

Every issue presented in this statement of the present case has been decided contrary to the contentions of petitioner by the Terte Case, the last case decided by this Court upon the questions here involved.

Petitioner in support of the comment at page 19 of its brief to which we have referred, cites *American Railway Express Company v. Rouw Company*, 173 Ark. 710, 294 S. W. 401. In that case the Express Company had qualified to do business in the State of Arkansas and in compliance with the statute had designated an agent upon whom process might be served, 294 S W. pp. 403-4; facts which clearly distinguish it from the instant case.

IV.

Respondent is not engaged in business in Minnesota.

The petitioner contends that respondent was doing business in the state of Minnesota. This argument, however, is answered by *Texas Transport & Terminal Co. v. New Orleans,* 264 U. S. 150. In that case it was held that a state license tax cannot be laid upon the business of a corporation employed as agent by owners of vessels engaged exclusively in interstate and foreign commerce, where its business is soliciting and engaging of cargo, naming vessels to carry it, arranging for delivery on wharf and for unloading, issuing bills of lading, collecting freight, paying ships disbursements and other incidental matters.

See also the later case of *Di Santo v. Pennsylvania,* 273 U. S. 34, holding that a state statute requiring a person engaged in the sale of steamship tickets or orders for transportation to or from foreign countries, to procure a license, is a direct burden on foreign commerce contravening the commerce clause of the Constitution.

The waters navigated by respondent's ships, irrespective of the Constitution of Minnesota, are free to commerce for they are navigable waters of the United States.

Gibbons v. Ogden, 9 Wheaton 1;

Gilman v. Philadelphia, 3 Wall. 713;

Gibson v. United States, 166 U. S. 269;

United States v. Chandler-Dunbar Water Power Co., 229 U. S. 53;

Greenlead Johnson Lbr. Co. v. Garrison, 237 U. S. 251.

V.

Summary.

It appears conclusively in the present action that the purported levy of attachment and service of process do impose a burden on interstate commerce. Respondent denies that petitioner is a resident of Minnesota, but if it were the residence of a plaintiff in the state in which an action is brought is not determinative of the question of whether a suit brought in a state does not impose a burden upon interstate commerce. The issue relates to the defendant.

In the petition (p. 5) suggestion is made as to the great importance of this case and the settlement of the law upon the questions here involved as bearing upon what it is conceived may be the effect upon some future contingency. It is sufficient to say that upon the facts as presented in this case, the law is well settled.

It therefore appears that a state court has decided a federal question of substance which has been definitely and positively determined by this court, and that the state court has decided this question in a way positively in accord with applicable decisions of this court.

Respectfully submitted,

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